IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, AS NEXT FRIEND OF ALISON CHANG, A MINOR, AND JUSTIN HO-WEE WONG,	§	
PLAINTIFFS,	§	CA No. 3:07-cv-1767
V.	§	
VIRGIN MOBILE PTY LTD.,	§	
DEFENDANT.	§	

APPENDIX IN SUPPORT OF
DEFENDANT VIRGIN MOBILE PTY LTD.'S MOTION TO DISMISS

Description	**Bates**
Declaration of Marcus Bourget in Support of Defendant Virgin Mobile Pty Ltd.'s Motion to Dismiss	APP 1 - 4
Declaration of Tan Pham in Support of Defendant Virgin Mobile Pty Ltd.'s Motion to Dismiss	APP 5 - 6
Excerpts of Flickr.com discussion blog entitled, "Dump Your Pen Friend on Flickr – Photo Sharing"	APP 7 - 9
Excerpts of Flickr.com discussion forum entitled, "Flickr: Discussing Virgin Mobile advertising campaign using Flickr Photos in Flickr Central"	APP 10 - 11
Excerpts of Flickr.com pages of Justin Wong	APP 12 - 30
Excerpts of Flickr.com pages of Alison Chang	APP 31 - 40
Creative Commons Attribution 2.0 License	APP 41 - 45
Virgin Mobile U.S., LLC's Responses and Objections to Plaintiffs' First Interrogatories dated November 21, 2007	APP 46 - 65
Australian Government – Attorney-General's Department webpages regarding "Service of foreign court process in Australia"	APP 66 - 69

HOUDMS/205628.1

Dockets.Justia.com

Respectfully submitted,

BAKER & McKENZIE LLP

/s/ Lisa H. Meyerhoff

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ATTORNEYS FOR DEFENDANT
VIRGIN MOBILE PTY, LTD.

CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of December 2007, I electronically filed the foregoing "Appendix in Support of Defendant Virgin Mobile Pty, Ltd.'s Motion to Dismiss" with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, AS NEXT FRIEND OF ALISON CHANG, A MINOR, AND JUSTIN HO-WEE WONG, Plaintiffs, V. VIRGIN MOBILE PTY, LTD., Defendant.	§ § § § § § § § § § § §	C.A. No. 3-07-CV-01767-ECF

DECLARATION OF MARCUS BOURGET IN SUPPORT OF DEFENDANT VIRGIN MOBILE PTY, LTD.'S MOTION TO DISMISS

I, Marcus Bourget, declare and state as follows:

1. I am over 21 years of age and have personal knowledge of the facts stated below.
2. I am the Corporate Counsel of Virgin Mobile Pty Ltd. ("Virgin Australia"), and have been with the company since January 2007, initially as a secondee from SingTel Optus Pty Limited ("Optus"), an Australian company, but from October 2007 as a full-time employee.
3. Virgin Australia was founded in October 2000 as a joint venture between the Virgin Group, a British company, and Cable & Wireless Optus Pty Limited (as Optus was then named). In August 2001, Optus became a wholly-owned subsidiary of Singapore Telecommunications Limited, a Singapore company, and it changed its name to SingTel Optus Pty Limited. In January 2006, Optus purchased the Virgin Group's shares of the joint venture and became 100% owner of Virgin Australia. Virgin Australia is a wholly-owned subsidiary of Optus.
4. Virgin Australia was established to provide a range of mobile phone products and services, including without limitation, prepaid and postpaid mobile phones.
5. Virgin Australia uses the Optus telecommunications network to provide its products and services. Accordingly, Virgin Australia's only geographic area of operation is

domestic Australia, limited to coverage areas of the Optus telecommunications network. It is therefore Virgin Australia's policy (and Virgin Australia is only authorized) to sell its products and services only to those consumers within its coverage area.

6. Since its inception, Virgin Australia has been known for its original and innovative advertising campaigns that have won numerous foreign advertising awards, including various awards at the Cannes Lions International Advertising Festival in 2004, 2005 and 2006.
7. In mid 2007, Virgin Australia launched its "Are You With Us Or What?" domestic advertising campaign (the "2007 Campaign"). The 2007 Campaign included a number of images and media, and it was shown through various channels in Virgin Australia's domestic coverage areas.
8. Incorporated within the 2007 Campaign was a photograph of Alison Chang obtained from Flickr's worldwide-accessible web site for publicly shared images. The image Alison Chang was apparently placed on Flickr's public site by Justin Wong pursuant to a Creative Commons Attribution 2.0 license agreement, where Wong intentionally selected and granted the most unrestricted use (including commercial use and no payments) available to any worldwide user. The photograph of Ms. Chang was never posted by Virgin Australia on its website or on any other website. The image was only used on bus shelter 'ad shells' in major metropolitan areas in Australia.
9. Virgin Australia's advertisement incorporating the photograph of Alison Chang has never been distributed, or otherwise authorized to be distributed, by Virgin Australia in the United States, including in Texas. The advertisement incorporating the photograph of Alison Chang was never posted on Virgin Australia's website, nor was it posted online anywhere by Virgin Australia.

10. In selecting the image of Alison Chang from the hundreds of millions of available photographs from Flickr, Virgin Australia did not know where, how or why the image was created by Justin Wong (nor his residence), the nationality of the individual in the image, and/or what province, region or state she claimed as a resident.

11. Virgin Australia does not have any employees, maintain any office or facilities in the U.S., including in Texas. Virgin Australia does not maintain any mailing address, phone number, or place of business in the U.S., including in Texas. Virgin Australia does not own any bank accounts or solicit, transact, engage or enter into any type of business in the U.S., including in Texas.

12. Any business related to "Virgin Mobile" in the U.S. is not carried out by Virgin Australia, but rather by a separately owned U.S. company already dismissed by Plaintiffs that simply licenses the Virgin trademarks - Virgin Mobile USA, LLC. Virgin Australia is not authorized to, and in fact does not, conduct business anywhere in the U.S., including in Texas. Virgin Australia and Virgin U.S. have no connections by business relationship or by parent company ownership.

13. Virgin Australia has not entered into any contract, license, or agreement in Texas or with any Texas party. Rather, the only agreement at issue, is a Creative Commons Attribution 2.0 license agreement, utilized by Wong to post the image of Alison Chang to the world wide web for anyone's use, including their commercial use. Virgin Australia simply utilized the image of Alison Chang pursuant to the Creative Commons Attribution 2.0 license agreement, which allowed Virgin Australia to utilize the selected image from the hundreds of millions for photographs available on Flickr's public site for unrestricted commercial use. Virgin Australia does not distribute or intend to distribute any of its products in the U.S., including in Texas. Virgin Australia has not solicited, transacted, received and/or entered into any type of contract to perform and/or to be performed with a U.S. or Texas resident. Further,

Virgin Australia has never sought to derive any income from Texas or a Texas business entity.

14. No Virgin Australia employees have traveled to Texas for business reasons arising from their course of employment with, and/or duties for, Virgin Australia.

15. It would be extremely inconvenient for Virgin Australia and its representatives to travel to the U.S., including to Texas, for any business purpose, or for this lawsuit. Further, Virgin Australia is in not familiar with the U.S. legal system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 19 th day of December, 2007, at Sydney, Australia.

____
Marcus Bourget

HOUDMS/220924.1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, AS NEXT FRIEND OF ALISON CHANG, A MINOR, AND JUSTIN HO-WEE WONG,	§	
Plaintiffs,	§	C.A. No. 3-07-CV-01767-ECF
V.	§	
VIRGIN MOBILE PTY, LTD.,	§	
Defendant.	§	

DECLARATION OF TAN PHAM IN SUPPORT OF DEFENDANT
VIRGIN MOBILE PTY, LTD.'S MOTION TO DISMISS

I, Tan Pham, declare and state as follows:

1. My name is Tan Pham. I am an associate with the firm of Baker & McKenzie LLP. Our firm represents Defendant in the above-captioned suit. This Declaration is submitted in support of Defendant's Motion to Dismiss.

2. I am over the age of twenty-one (21) and am competent to make this Declaration. I have personal knowledge of the facts stated herein.

3. Attached to Defendant's Appendix is a true and correct copy of excerpts from a Flickr.com discussion blog entry entitled, "Dump Your Pen Friend on Flickr – Photo Sharing." APP 7 - 9.

4. Attached to Defendant's Appendix is a true and correct copy of excerpts from a Flickr.com discussion forum entitled, "Flickr: Discussing Virgin Mobile advertising campaign using Flickr Photos in Flickr Central." APP 10 - 11.

5. Attached to Defendant's Appendix is a true and correct copy of excerpts of webpages of Justin Wong from Flickr.com. APP 12 - 30.

6. Attached to Defendant's Appendix is a true and correct copy of excerpts of webpages of Alison Chang from Flickr.com. APP 31 - 40.

7. Attached to Defendant's Appendix is a true and correct copy of the Creative Commons Attribution 2.0 License. APP 41 - 45.

8. Attached to Defendant's Appendix is a true and correct copy of Virgin Mobile U.S., LLC's Responses and Objections to Plaintiffs' First Interrogatories. APP 46 – 65.

9. Attached to Defendant's Appendix is a true and correct copy of a printout of the Australian government's comments on "Service of foreign court process in Australia." APP 66 - 69.

I declare under penalty of perjury that the foregoing is true and correct.

Date: December 20, 2007

Tan Pham

Dump Your Pen Friend

DUMP YOUR
PEN FRIEND
FREE TEXT VIRGIN TO VIRGIN
Are you with us or what?

Uploaded on May 27, 2007
by sesh00

sesh00's photostream

72 photos

browse

This photo also belongs to:

Virgin Mobile - Are you with us or what? (Pool)

Tags

- adelaide
- 400d
- 50mm1.8
- photowalk
- flickr
- bus
- bus shelter
- peace
- flickrite

Additional Information

© All rights reserved

- Taken with a Canon EOS 400D Digital.
  More properties

APP 7

- Taken on May 27, 2007
- 102 people call this photo a **favorite**
- Viewed **173,598** times

This photo is **public**

Saw this while I was walking into the city earlier today - down in the bottom corner it says that the photo is from flickr.com/photos/chewywong.

I wonder if he knows that his photo is being used here (most of his photos seem to be using a Creative Commons Attribution license). Anyway - congratulations!

For clarification, this is an advertising campaign being ran by Virgin Mobile in Australia. There have been sightings of these billboards containing photos from Flickr in both Melbourne (Victoria, Australia) and Adelaide (South Australia, Australia).

APP 8

There is a post in the FlickrCentral group about this photo -
www.flickr.com/groups/central/discuss/72157600541608353/
This photo has notes. Move your mouse over the photo to see them.

Comments

< Prev 1 2 3 Next >
(249 comments)

aleeviation says:

hey that's me! no joke. i think i'm being insulted...can you tell me where this was taken.
Posted 6 months ago. (permalink)

chewywong pro says:

where was this? do you think virgin mobile will give me stuff?
Posted 6 months ago. (permalink)

sesh00 pro says:

I'm quite suprised that you were not in the least informed that your photo was being used!

The photo was taken on Churchill Road, Adelaide, Australia. I believe that it's being used as part of a national campaign - there are a lot of other slogans and photos being used, I think some of the others are from flickr as well.

As for getting free stuff - it can't hurt to try, but if the photo was released under a CC license that allows for commercial use, then they haven't really done anything wrong.

Virgin Mobile Australia website - www.virginmobile.com.au/
Posted 6 months ago. (permalink)

aleeviation says:

what does that mean-CC license? how did chewywong get that license on his photos. so virgin mobile hasn't used his photos without his permission or anything?
Posted 6 months ago. (permalink)

APP 9

FlickrCentral / Discuss

Current Discussion

No!
Latest: 72 seconds ago

Camera blinding device..
Latest: 8 minutes ago

equipment question--backdrops
Latest: 16 minutes ago

200 photos
Latest: 19 minutes ago

awash premeditate banal blab blameworthy piddle
Latest: 27 minutes ago

Do you believe in a thing called god?
Latest: 44 minutes ago

Carry On Real Life
Latest: 77 minutes ago

Interesting image software
Latest: 2 hours ago

New group announcements!
Latest: 4 hours ago

OPEN WEB AWARDS - Vote for Flickr as Best Photosharing Site!

Virgin Mobile advertising campaign using Flickr photos

sesh00 pro **says:**

Hi Everyone,

I'm just looking to bring this to peoples attention, and perhaps get the people involved some advice on what to do next.

A little over a month ago I took a photo of a billboard I saw in Adelaide, Australia (which is part of a national advertising campaign). The reason I took the photo was because the image was credited to a Flickr user, and I thought I would take a photo so (s)he could see the photo in action. I was presuming all along that Virgin Mobile would have at least let the user know the photo was being used in this way.

It turns out that the user wasn't actually told about the photo being used in the campaign, although since the photo was released under the CC-BY-2.0 licence this really isn't the issue.

The issue is that Virgin Mobile (or the advertising company) failed to obtain model releases for the person who was actually in the photo. My understanding of Australian law is that a model release is required when a person's image is being used to advertise a product. This is definitely advertising a product.

The first reaction of the person in the photo was "i think i'm being insulted".

We've found quite a few similar billboards that contain images obtained from Flickr under the same licence, most users either didn't know the photo was being used, and we're pretty sure that no-one in any of the photos has signed a model release.

There is already quite a bit of discussion about the issue in the photo comments - which you can see here.

There are a couple of questions that arise from this. Firstly, does a photo being released under a licence that allows commercial use imply that models in the images have signed releases for the image to be used commercially? Is the way in which these advertisers are crediting the Flickr users acceptable (see the photo for an

APP 10

Latest: 4 hours ago

[Embeddable Slideshows via Flickr?]
Latest: 4 hours ago

[SELL OUT ! Christmas! Have you been sold to Santa?]
Latest: 4 hours ago

More...

example)?

I'm hoping that someone in the know, or Flickr itself, will be able to pitch in and offer advice on where to go from here - it's getting a little of my head.

Cheers,
Brenton

P.S. If anyone has advice on where to post this or who to post it to - PM me and I'll pass it on.
Posted at 5:26PM, 28 June 2007 PST (permalink)

< Prev 1 2 3 Next >

(1 to 100 of 281 replies in Virgin Mobile advertising campaign using Flickr photos)

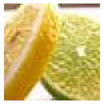
richard ling pro **says:**

Thankfully I was just looking at the legal situation for Australian photographers.

From www.4020.net/words/photorights.php:

> "Australian Federal Trade Practice law is ruthlessly unambiguous: according to the Passing Off provisions in the Commonwealth Trade Practices Act 1974, (Part V — Division 1 — Unfair practices eg. Section 53), if you are silly enough to use a photo of someone without their permission (ie. without a signed Model Release), in an advertisement or other commercial context, then you are guaranteed to become a defendant in a statutory damages claim.
>
> There is no way to wriggle out of this. Time and again Clueless Marketeers have discovered, to their distress, just how costly it can be to include shots of individuals in print advertisement, album covers or posters, without the subject's full authority and consent — see Henderson v Radio Corp [1960] S.R. (NSW) 576, Hogan v Koala Dundee Pty Ltd (1988) ATPR 40-902 and Talmax v Telstra Corp Ltd [1996] QSC 34.

APP 11



chewywong's photos

pro

View as slideshow

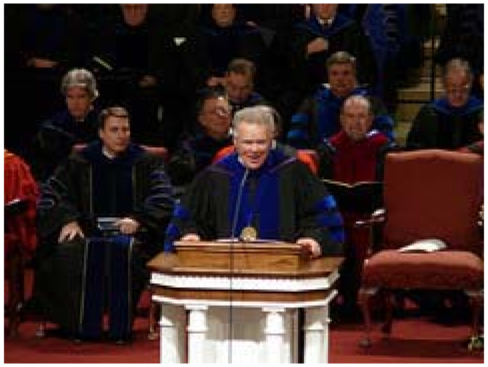
SWBTS: Rock On!

SOUTHWESTERN

taken from: Deen Ling

© All rights reserved.
Uploaded on Dec 19, 2007
0 comments

Mr. President



taken from: Deen Ling

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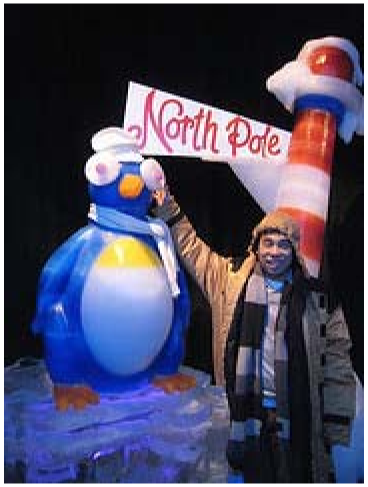
Uploaded on Dec 19, 2007
0 comments

The North Pole



rudolpho!

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

ICE!
12 photos

Sunday Mornings: A Few Left
3 photos

Kevin's Madrigals Dinner

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

petting zoo

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

frozen tina

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

permafrost

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

nativity

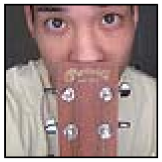
© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

32 photos

Masters of Divinity
46 photos

Christina's Birthday
17 photos

seminary lunch: 11.30.07
36 photos



the golden arches

© All rights reserved.

Uploaded on Dec 17, 2007

0 comments

tina & santa

© All rights reserved.

Uploaded on Dec 17, 2007

0 comments

ICE!

picture frame

© All rights reserved.

Uploaded on Dec 17, 2007

0 comments

sleigh ride

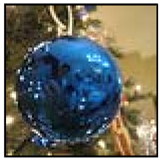
© All rights reserved.

Uploaded on Dec 17, 2007

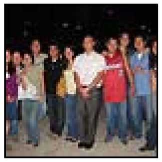
0 comments

negative 2394810 degrees

Martin & Co.
4 photos



Thanksgiving 2007
62 photos



2007 November Birthdays
38 photos

Fall Festivities 2007
95 photos

» More Sets

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

Band of Brothers

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

Don't mess with us

it's that GOOD!

© All rights reserved.
Uploaded on Dec 17, 2007
1 comment

big smile

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

© All rights reserved.
Uploaded on Dec 17, 2007
0 comments

< Prev 1 2 3 4 5 6 7 ... 682 683 Next >

(12,283 photos)

Subscribe to chewywong's photos – Latest | geoFeed | KML

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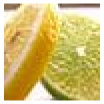

chewywong's photos pro

This is a complete archive of all chewywong's photos.

SEARCH

Taken on

1999
- March (8)

2001
- August (15)
- September (15)
- October (9)
- November (2)

2002
- February (7)
- March (4)
- April (6)
- May (3)
- June (1)
- July (5)
- August (7)
- December (1)

2003
- January (1)
- July (5)
- August (30)

2004
- January (1)

Posted to Flickr

2005
- May (14)
- June (166)
- July (546)
- August (490)
- September (218)
- October (175)
- November (446)
- December (128)

2006
- January (518)
- February (319)
- March (366)
- April (304)
- May (496)
- June (1539)
- July (1349)
- August (343)
- September (192)
- October (213)
- November (254)

- April (2)
- May (16)
- June (17)
- July (8)
- August (1)

2005

- April (3)
- May (22)
- June (142)
- July (603)
- August (376)
- September (197)
- October (191)
- November (463)
- December (409)

2006

- January (240)
- February (300)
- March (399)
- April (273)
- May (647)
- June (1710)
- July (1008)
- August (343)
- September (192)
- October (213)
- November (269)
- December (738)

2007

- January (319)
- February (383)
- March (232)
- April (409)
- May (487)
- June (360)
- July (460)

- December (792)

2007

- January (352)
- February (384)
- March (232)
- April (409)
- May (267)
- June (580)
- July (379)
- August (306)
- September (104)
- October (141)
- November (148)
- December (113)

- August (225)
- September (104)
- October (142)
- November (149)
- December (111)

You Sign in | Create Your Free Account
Explore Places | Last 7 Days | This Month | Popular Tags | Creative Commons | Search
Help Community Guidelines | The Help Forum | FAQ | Sitemap | Help by Email

Flickr Blog | About Flickr | Terms of Use | Your Privacy | Copyright/IP Policy | Report Abuse

Send to a friend
Save to del.icio.us

a YAHOO! company

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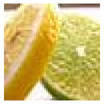


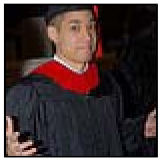
chewywong's photos pro

Collections | Sets | Tags | Archives | Favorites | Profile

ICE!
12 photos

Sunday Mornings: A Few Left
3 photos

Kevin's Madrigals Dinner
32 photos



Masters of Divinity
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seminary lunch: 11.30.07
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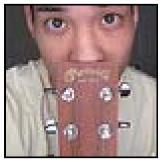
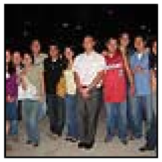


Martin & Co.
4 photos

Thanksgiving 2007
62 photos

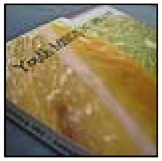


2007 November Birthdays
38 photos

Fall Festivities 2007
95 photos

October Weekends
38 photos

Tina's Birthday Extravaganza!
16 photos



Books!
10 photos

Terrific Tuesdays: 09.11.07
50 photos

swbts: start of fall '07
37 photos

Rangers: 08.23.07
41 photos

Dean & Penny's Goodbye
32 photos

End of Summer 2007
36 photos

Camp Impact 2007: Transformers
74 photos

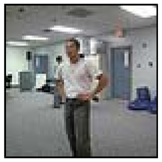
Discovery Camp 2007: Transformers
115 photos

Youth Crusade 2007: 가족
65 photos

Youth Crusade 2007: joie
123 photos

Youth Crusade 2007: Fun & Games
64 photos

Mr. & Mrs. Benjamin Pun
105 photos



Compass Welcomes Back Jody
20 photos

World Changers '07: Swamp Tour
40 photos

World Changers '07: On the Road Again
39 photos

Family Vacation: Summer 2007
127 photos

Happy Birthday Courtney Wong
26 photos

DCCYC '07: The Family
67 photos

DCCYC '07: Spontaneous
65 photos

DCCYC '07: Athletics
49 photos

DCCYC '07: Out Cold
11 photos

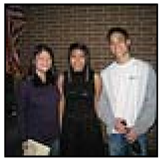
FCBCA: Church Retreat '07
152 photos

Simply Fondue: 05.20.07
18 photos

Post Finals Fun: Atown
31 photos

Just Wii-nderful!
16 photos

Puzzle Fun: Eeyore Photomosaic
11 photos



Sammy's Choir Concert
15 photos

Classics: Vol. V
23 photos

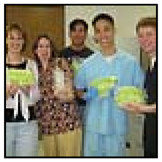
Classics: Vol. IV
36 photos

Classics: Vol. III
31 photos

Classics: Vol. II
34 photos

Classics: Vol. 1
36 photos

Garden Party: 04.27.07
75 photos



Goodbye Pharmacy
14 photos

Southwestern Preview: 2007
5 photos

Main St. Fort Worth Arts Festival
39 photos

TGIF: Scavenger Hunt
14 photos

Photo Scavenger Hunt: 팀 파랑 (team blue)
38 photos

Photo Scavenger Hunt: 팀 녹색 (team green)
23 photos

Photo Scavenger Hunt: 팀 황색 (team yellow)
14 photos

Photo Scavenger Hunt: 팀 빨강 (team red)
16 photos

Justin & Jennifer Lin's Wedding
107 photos

Easter Weekend: 2007
63 photos

George Lee's Unofficial Birthday
12 photos

Ping & Jane's Wedding Shower
47 photos

Mid-week meetings
15 photos

Spring Break Potluck '07
14 photos

Spring Break 2007
51 photos

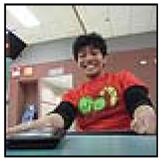
Fun with Vista: 03.13.07
19 photos

Michelle's Birthday
17 photos

TGIF: The One With The Eggs
16 photos

Hyung's Birthday: #24
5 photos

Kites & Grill: 03.03.07
32 photos



Happy Birthday Tony Hongnoi!

32 photos

The Best 2.23.07 Ever!
35 photos

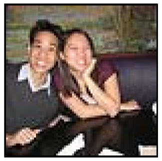
I Heart February: 2007
78 photos

TGIF: Valentine's 2007
60 photos

Potluck Mondays: 02.12.07
8 photos

Clarity: Student Life Conference...
44 photos

Zoo Day: 02.05.07
84 photos

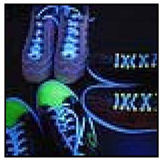


Happy Birthday Sister: The Big Two-One
25 photos

RCSD: Really Cold Soccer Day
5 photos

SWBTS Basketball: Team Pastors!
21 photos

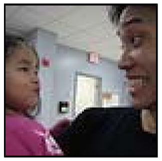
TGIF: 01.26.07
16 photos



Compass: January Birthdays
18 photos

ACW: Another Crazy Weekend
61 photos

Snowday: Winter comes to Ft. Worth
26 photos



The New Year: January 2007
49 photos

Birthday #25: Welcome to Lower Insurance
61 photos

Houston New Years Eve: 12.31.06
30 photos

CBC Winter Retreat 2006: The Familiy
24 photos

CBC Winter Retreat 2006:...
127 photos

CBC Winter Retreat 2006:

CBC Winter Retreat 2006:

CBC Winter Retreat 2006:

Houston: Winter 2006

Christmas @ Compass:

Las Colinas Symphony:

Jump Around
64 photos

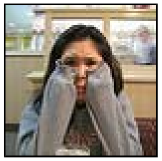
Making the...
55 photos

Ropes
52 photos

110 photos

12.17.06
57 photos

12.16.06
4 photos



TGIF: Christmas Party '06
33 photos

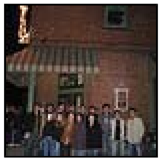
Seminary Finals: Fall 2006
8 photos

MHS Choir Concert: 12.11.06
16 photos

Gingerbread Day: 12.10.06
30 photos

Pharmacy Christmas: 12.09.06
30 photos

atown: 12.10.06
12 photos



Christina's Birthday: 12.08.06
22 photos

Lamar Orchestra: 12.07.06
14 photos

Older than old school
105 photos

Compass Birthday: Babe's Chicken...
22 photos

TGIF: Ramen Night 12:01:06
36 photos

Family Portraits
29 photos

Family Thanksgiving 2006
111 photos

TGIF: 11.17.06
16 photos

Stressed Seminarians: fall '06
35 photos

Thanksgiving Potluck: 11.13.06
16 photos

Happy Birthday Julia & Deen
36 photos

State Fair: 10.21.06
74 photos

Potluck Mondays

αγαπώ να μελετήσω

Lamar Orchestra

State Fair: 10.07.06

Puzzle Fun: Fantasia

Fishy School: 09.17.06

33 photos

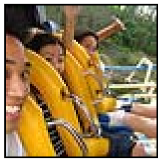
38 photos

Concert: 10.10.06
18 photos

53 photos

Photomosaic
9 photos

15 photos



Angela's Birthday: 09.12.06
45 photos

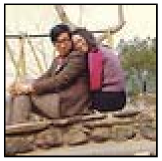
1...2...Let's Play Zoo
39 photos

Oakridge vs. Trinity Valley
15 photos

Courtney: Field Hockey: 08.31.06
20 photos

Compass: Summer '06 Birthdays
29 photos

Orlando: Summer 2006
119 photos



Houston Highlights: Summer '06
116 photos

Happy 30th Anniversary Mom and Dad
23 photos

Summer Fun: August '06
55 photos

Project Serve '06: cleaning up
64 photos

Project Serve '06: aléatoire
91 photos

Project Serve '06: Nightly Fun
73 photos

Project Serve '06: Rainbow Express
103 photos

Lisa & Kyle's Wedding
123 photos

Houston Trip: 07.22.06
63 photos

Operation: make jwang cry
43 photos

atrium pictures
37 photos

Work: Compounding Pharmacy
27 photos

atown fun: 2nd

Lisa & Kyle's

DCLA '06:

DCLA '06:

DCLA '06: csm

DCLA '06:

week of july
32 photos

Bridal Shower:...
31 photos

randomness
190 photos

cathy world
23 photos

99 photos

jump around
40 photos

DCLA '06: botanical gardens
34 photos

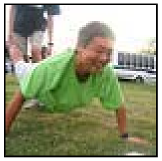
DCLA '06: the animals
44 photos

DCLA '06: fireworks
32 photos

DCLA '06: the tour
74 photos

DCLA '06: group shots
34 photos

DCLA '06: yummy
29 photos



DCLA '06: out and about
42 photos

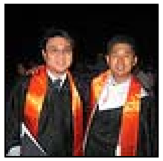
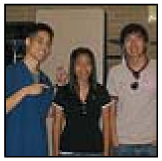
ACC Youth: Random
16 photos

Houston: 06.18.06
62 photos

Alvarado Wedding: 06.17.06
32 photos

ACC Senior Graduation Banquet
55 photos

DCCYC '06
30 photos

Calvin's Wedding: Vol I
430 photos

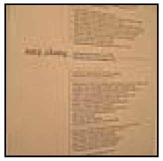
Calvin's Wedding: Vol. II
412 photos

Calvin's Wedding: Vol. III
347 photos

World Series of Poker
78 photos

2006 Graduations
194 photos

Sammy's Concert: 05.16.06
10 photos



Goodbyes:

Botanical

Amy's

Post Finals

Hello Goodbye

BYX Island

Summer 2006
16 photos

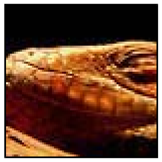
Gardens: Fort Worth
60 photos

Graduation
60 photos

Fun: 05.06.06
60 photos

18 photos

Party: TCU
61 photos



atx: 04.22.06
68 photos

Amy's Baptism: Carinos
11 photos

Wenet's Zoo
73 photos

Painting with the Lesters
22 photos

YML & some...
63 photos

Java Jam 2006
167 photos

Spring Break @ Fun Fest
3 photos

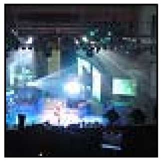
the market: come buy...
10 photos

Spring Break '06
86 photos

Valentine's Day Party
77 photos

Dean & Penny Wedding: 02.25.06
114 photos

TGIF: Game Night: 02.24.06
33 photos



Tony Hongnoi's Birthday
22 photos

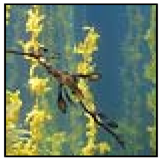
Dean's Bachelor's Party
23 photos

Student Life Tour '06
90 photos

Joe T. Garcia's Birthday Bash
50 photos

MLK fun: 01.15.06
74 photos

KBCA Winter Retreat '05
213 photos



Houston

ACC Winter '05

Galleria Fun:

ATL:

Memphis Trip:

Compass

Winter '05
188 photos

92 photos

11.26.05
32 photos

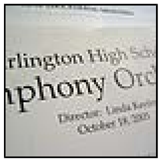
Thanksgiving '05
43 photos

11.18-21.05
117 photos

Birthdays: 11.13.05
52 photos

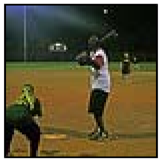
Courtney Wong's Fan Club: Soccer - ...
11 photos

Driving Range: 11.06.05
12 photos



Thanh's Wedding Reception: 11.05.05
56 photos

Servant Leaders Retreat: 11.05.05
83 photos

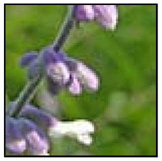


Courtney Wong's Fan Club: 11.04.05
34 photos

Pumpkin Patch: 10.29.05
28 photos

HPMS School Choir: 10.27.05
5 photos

Miss Sharon Tan: 10.18.05
6 photos



Softball Fun: 10.17.05
25 photos

Baylor Alum Softball: 10.10.05
8 photos

Courtney Wong's Fan Club: 10.07.05
48 photos

State Fair of Texas: 10.01.05
36 photos

ACC TGIF: 09.30.05
17 photos

Botanical Gardens: 09.30.05
16 photos

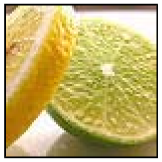
ACC: Photo Scavenger Hunt: Team Platypus
34 photos

ACC: Photo Scavenger Hunt: Team Bubbles
36 photos

ACC: Photo Scavenger Hunt: Team Crawfish
34 photos

ACC: Photo Scavenger Hunt: Team Crayons
32 photos

Putt-Putt: 08.28.05
27 photos



Driving Range: 08.21.05
28 photos

Murder Mysteries: 08.19.05
46 photos

ATL: The Dirty South - our new home.
21 photos

Museums: For the kid in you
70 photos

Closing Time: 08.14.05
24 photos

Love: A Plethora of Food
69 photos

ACC Weekend: 08.06.05
60 photos

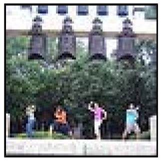
Old School: Laredo 2002
27 photos

China Missions 2005: Recap
62 photos

Vintage Chewy: Memories of the Past
113 photos

Goodbye Houston 08.05
33 photos

Farewell: 07.31.05
28 photos



China Missions 2005: Places
26 photos

China Missions 2005: Friends
39 photos

China Missions 2005: Team
78 photos

China Missions 2005: Foods
16 photos

China Missions 2005: Chicony
6 photos

China Missions 2005: East Lake
35 photos

China Missions 2005: Camp - Day #5
15 photos

China Missions 2005: Camp - Day #4
83 photos

China Missions 2005: Camp - Day #3
52 photos

China Missions 2005: Camp - Day #2
62 photos

China Missions 2005: Camp - Day #1
65 photos

Celebrate Freedom '05
25 photos

Hurricane Harbor: 06.28.05
74 photos

Bowl-a-rama: 06.26.05
13 photos

misc
19 photos

six flags: 06.14.05
27 photos

baseball fun: 06.13.05
5 photos

friends
25 photos

CBC: Senior Banquet '05
4 photos

favorito
59 photos

DCCYC '05
11 photos

FCBCA Church Retreat 2006
82 photos

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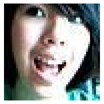

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great ball of fire!

happy fourth of july, everyone

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green with envy

this one's my favorite

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1 comment

poms poms

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1 comment

dipped in red

ferris wheel

sea urchin

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quiet evening

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springtime

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2 comments

evening glow

just the colors are nice

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4 comments

campfire

taken over grapevine lake

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don't rock the boat, baby

mmm not a really great shot...but i like the color of the water.

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Uploaded on Jun 5, 2007
1 comment

destruction

one of my favorite pictures that i've taken.

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i was sitting too far away, so i couldn't get anything really good...

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the road to destruction is broad and wide.

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0 comments

feeling left out.

my main focus...though executed badly, was that on one side there was this lonely guy, and on the...

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woody

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1 comment

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alee on a stick's photos

Twin Fountains

i have more pictures, but my bandwidth has been used...well, until next month. if you want to see...

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Golf?

i liked the sharpness of it...i guess you can't really tell here.

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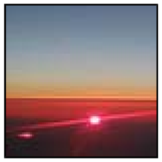
Sold

Telefono



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106 photos

DCCYC06
58 photos

coca cola tour @ northeast
6 photos

if the "sold" part was brighter...

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1 comment

Desire

yes, mannquins have feelings too. yes, i used this exact same caption on my xanga entry

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Uploaded on Oct 6, 2006
0 comments

My Blue Heaven

i had the right idea..if only i had the eye to get what i really wanted.

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0 comments

Greyhound

HOUND
HOUND

well technically i didn't take this picture...and I didn't do the effects either....yet it's still...

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1 comment

Bug's Eye View

lake at DCCYC, oh how i miss that place.

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0 comments

this is the one i decided to submit...wish me luck!

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It's Raining in Washington

some photos i considered entering for this contest...

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two suns??

it was a crazy day, but we finally got home.

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ginger ale

happy fourth of july

it's see through, cool!

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at the twilight's last gleaming

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by the dawn's early light?

what so proudly we hailed

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oh say can you see

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elmo!

how do they control elmo if he's on a tricycle?

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stars and stripes

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUSAN CHANG, as Next Friend of ALISON CHANG, a Minor, AND JUSTIN HO-WEE WONG Plaintiffs,	§	
v.	§	CAUSE NO. 3:07-CV-1767-D
VIRGIN MOBILE USA, LLC, VIRGIN MOBILE PTY LTD., AND CREATIVE COMMONS CORPORATION Defendants.	§	

VIRGIN MOBILE USA, L.L.C'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT VIRGIN MOBILE USA, L.P.

Pursuant to Fed. R. Civ. P. 33, Virgin Mobile, USA L.P. (which, collectively with Virgin Mobile USA, LLC, is hereinafter referred to as "Virgin Mobile USA"), by its undersigned counsel, hereby objects and responds to Plaintiffs' First Interrogatories to Defendant Virgin Mobile USA, L.P. dated November 7, 2007 (which, together with the definitions therein, are hereinafter referred to as the "Interrogatories") as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Virgin Mobile USA objects generally to the Interrogatories on the grounds that they seek information that is not relevant to the claims or defenses of any party to the lawsuit, including but not limited to whether Virgin Mobile USA is a separate and legally distinct entity from Virgin Mobile Pty. Ltd. ("Virgin Mobile Australia") or was involved in any way in obtaining the photograph at issue in the lawsuit or in running the challenged Australian advertisement campaign.

2. Virgin Mobile USA objects to the Interrogatories to the extent that they seek to impose obligations and duties beyond those required under Rules 26 and 33 of the Federal Rules of Civil procedure.

3. Virgin Mobile USA will respond to the Interrogatories on the basis of the best information available to it at the time of its response, within the limitations of and subject to the objections described below. The fact that Virgin Mobile USA is willing to provide information in response to a particular interrogatory does not constitute an admission or acknowledgment that the interrogatory is proper, that the information it seeks is relevant, admissible, or within the proper bounds of discovery, or that requests for similar information will be treated in a similar fashion.

4. The responses herein reflect only the present state of Virgin Mobile USA's knowledge or information regarding the information requested. Virgin Mobile USA expressly reserves the right to supplement its response to any specific interrogatory.

5. Virgin Mobile USA expressly reserves, and this response to the Interrogatories shall not constitute a waiver of, Virgin Mobile USA's right (a) to object on any ground to the use of the information provided in response to the Interrogatories, (b) to object on any ground to other discovery requests that involve or relate to the subject matter of the above-captioned action, and (c) to revise, correct, supplement or clarify any of the responses set forth herein at a later date. Virgin Mobile USA does not admit, adopt or acquiesce in any factual or legal contention, assertion or characterization that is contained in the Interrogatories (or any particular interrogatory therein).

6. Virgin Mobile USA objects generally to the Interrogatories to the extent that they seek confidential business information, which Virgin Mobile will provide only subject to the entry of an appropriate confidentiality stipulation and protective order.

7. Virgin Mobile USA objects to the Interrogatories to the extent that they seek the disclosure of information protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other privilege available under federal or state statutory, constitutional or common law. The inadvertent disclosure of information that is privileged or constitutes work product shall not be deemed to waive the privilege or work product protection with respect to that information or any information and/or document related thereto.

8. Virgin Mobile USA objects to the Interrogatories to the extent that they purport to seek information that is not within Virgin Mobile USA's possession, custody or control, not known to Virgin Mobile USA, or that has not yet come into existence.

9. Virgin Mobile USA objects generally to the Interrogatories to the extent that their definitions are overly broad, vague, ambiguous, confusing or misleading.

10. Virgin Mobile USA objects to Definition A and the definition of the terms "Plaintiffs," "Chang," and "Wong" to the extent that it purports to include "all other natural persons or businesses or legal entities acting or purporting to act on their behalf." Virgin Mobile USA's response to the Interrogatories will be limited to only the Plaintiffs, Chang and Wong and those individuals who have represented to Virgin Mobile USA that they are acting on behalf of the Plaintiffs, Chang, or Wong.

11. Virgin Mobile USA objects to Definition C and the definition of "Virgin Pty. Ltd" on the ground that, because Virgin Mobile USA is a separately-organized and operated, distinct legal entity entirely independent of Virgin Mobile Australia, Virgin Mobile USA's

knowledge of "Virgin Pty. Ltd.'s" corporate structure and business operations is extremely limited and Virgin Mobile USA therefore is unable to approve, adopt, comment on or assess the accuracy of this definition. Virgin Mobile USA's response to the Interrogatories is based on its limited understanding of Virgin Mobile Australia.

12. Virgin Mobile USA objects to Definitions D and F and the definitions of the terms "Documents," "reports," "Identify," and "Identification" to the extent that those definitions purport to impose obligations and duties beyond those required by the Federal Rules of Civil Procedure.

13. Virgin Mobile USA objects to Instruction T to the extent that it purports to impose obligations and duties beyond those imposed by the Federal Rules of Civil Procedure.

14. Virgin Mobile USA objects to Instruction U to the extent that it purports to attribute some "generally understood meaning" to any "words or expressions" in the Interrogatories. Virgin Mobile USA will respond to the Interrogatories based on its understanding of the "words or expressions" contained therein.

15. Virgin Mobile USA objects to the Interrogatories to the extent that they assume the existence of facts or constitute an inaccurate characterization of the facts. Virgin Mobile USA does not admit, adopt or acquiesce in any factual or legal contention, assertion, characterization or implication contained in the Interrogatories.

16. Virgin Mobile USA objects to the Interrogatories to the extent that they purport to require a response before the November 23, 2007 response date stipulated and agreed to in the Stipulation of Plaintiffs and Virgin Mobile USA, L.P. dated October 30, 2007, which was entered as an Order of the Court on October 31, 2007 (Docket No. 10).

17. Counsel for Virgin Mobile USA will be prepared to discuss the objections presented herein with counsel for the Plaintiffs for the purpose of resolving any disputes that may arise without need for intervention by the Court.

18. These General Responses and Objections are incorporated into each of the Specific Responses and Objections below whether or not referred to in any Specific Response provided, and the Specific Responses set forth are not a waiver, in whole or in part, of any of these objections.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to the foregoing General Responses and Objections, Virgin Mobile USA responds to the Interrogatories as follows:

INTERROGATORY NO. 1:

Please identify each person that (1) answered these Interrogatories; (2) supplied information used or intended to be used in answering these Interrogatories; and (3) assisted with the formulation of the answers to these Interrogatories.

RESPONSE TO INTERROGATORY NO. 1:

Virgin Mobile USA objects to this interrogatory on the ground that it calls for information protected by the attorney-client privilege or the attorney work product doctrine. Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that members of Virgin Mobile USA's in-house legal department supplied information and assisted in preparing the response to the Interrogatories. This Interrogatory response has been verified by Peter Lurie, General Counsel to Virgin Mobile USA.

INTERROGATORY NO. 2:

Please state your full legal name, address and telephone number.

RESPONSE TO INTERROGATORY NO. 2:

Subject to the foregoing General Responses and Objections, Virgin Mobile USA states that its full legal name is Virgin Mobile USA, L.P., that its address is 10 Independence Boulevard, Warren, New Jersey 07059, Attn: General Counsel, and that its telephone number is 908-607-4100.

INTERROGATORY NO. 3:

Identify all persons who you or your attorney have contacted, or from whom you or your attorney have either obtained or requested a statement, regarding the allegations in Plaintiffs' Petition by stating their name, address, and last known work and home telephone numbers.

RESPONSE TO INTERROGATORY NO. 3:

Virgin Mobile USA objects to this interrogatory on the ground that it calls for information protected by the attorney-client privilege or the attorney work product doctrine. Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties at this early stage of the litigation, which discovery is to be limited solely to the issue of Virgin Mobile USA's status as a separately-organized and operated, distinct legal entity entirely independent of Virgin Mobile Australia and the fact that Virgin Mobile USA is not authorized to do business in Australia, in fact does not do business in Australia, and could not do business in Australia because its mobile wireless service does not function in Australia.

INTERROGATORY NO. 4:

Identify and describe Virgin Mobile's business structure, including within your answer the names and addresses of its general and limited partners, parents and subsidiaries, predecessors and successors and all other affiliated entities, if any.

RESPONSE TO INTERROGATORY NO. 4:

Virgin Mobile USA objects to the term "business structure" as vague and ambiguous.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states as follows: In October 2007, it completed an initial public offering that resulted in a change in its business name and "business structure" as Virgin Mobile USA understands that term. Prior to the initial public offering, Virgin Mobile USA, LLC was a joint venture between Sprint Nextel Corporation (through Sprint Ventures, Inc.) and the Virgin Group (through Bluebottle USA Holdings L.P.). In connection with the consummation of the initial public offering, Virgin Mobile USA completed a series of reorganization transactions following which Virgin Mobile USA, LLC, the operating entity, converted into Virgin Mobile USA, L.P., a Delaware limited partnership, and Virgin Mobile USA, Inc., a holding company for the operating partnership, offered shares to the public. A more detailed summary of these reorganization transactions is included in the section entitled "Reorganization Transactions" in Virgin Mobile USA's prospectus filed with the U.S. Securities and Exchange Commission on October 11, 2007, a copy of which is being produced with these Responses. At no point prior to, during, or following these transactions was Virgin Mobile Pty. Ltd. a general partner, limited partner, parent, subsidiary, predecessor, or successor to Virgin Mobile USA, LLC, Virgin Mobile USA, Inc. or Virgin Mobile USA, L.P.

INTERROGATORY NO. 5:

Please identify and describe all conventions, seminars, meetings, instruction courses, promotional events, and/or other corporate functions held or hosted by Virgin Group that were attended by employees, directors and/or officers of both Virgin Mobile US and Virgin Mobile Pty. Ltd. in the five (5) years preceding this lawsuit, including within your answer the location and date of each identified event.

RESPONSE TO INTERROGATORY NO. 5:

Virgin Mobile USA objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties at this early stage of the litigation, which discovery is to be limited solely to the issue of Virgin Mobile USA's status as a separately-organized and operated, distinct legal entity entirely independent of Virgin Mobile Australia and the question of whether Virgin Mobile USA is authorized to do business in Australia, does business in Australia, or otherwise was involved in the advertisement challenged in the lawsuit. Virgin Mobile USA further objects to this Interrogatory on the ground that it seeks information regarding the conduct and activities of third parties and non-parties to the above-captioned litigation.

Subject to the foregoing, Virgin Mobile USA states that from time to time, the Virgin Group organizes events in London, England for companies that license the Virgin brand, but at no time did any representative of Virgin Mobile USA discuss with any representative of Virgin Mobile Pty. Ltd. the marketing campaign, photograph or practice at issue in the lawsuit.

INTERROGATORY NO. 6:

Please identify and describe any written and/or oral statements within your possession, custody, or control that relate to this lawsuit, stating in your answer the name, address and telephone number of each person that gave and/or transcribed such statement, if any, along with the date such statement was given.

RESPONSE TO INTERROGATORY NO. 6:

Virgin Mobile objects to this interrogatory on the ground that it calls for information protected by the attorney-client privilege or the attorney work product doctrine. Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

INTERROGATORY NO. 7:

Please identify and describe any documents and/or communications relating to your contention that "Virgin Mobile USA is a separate and legally distinct entity from Virgin Mobile Pty. Ltd."

RESPONSE TO INTERROGATORY NO. 7:

Virgin Mobile USA objects to this interrogatory on the ground that it calls for information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA refers the Plaintiffs to its Response to Interrogatory No. 4. and to the documents produced herewith bearing Bates numbers VMUSA-00001 through VMUSA-00055 which are sufficient to show that Virgin Mobile USA is a separate and legally distinct entity from Virgin Mobile Pty. Ltd. One of those documents (VMUSA-00004-05) is a letter from Virgin Mobile Pty. Ltd. expressly informing the Plaintiffs prior to the filing of this lawsuit that "while Virgin Mobile (Australia) Pty Ltd (VMA) and VMUSA [Virgin Mobile USA, LLC] share a common brand, they are distinct and separate legal entities and VMUSA has had no involvement at all with this campaign. Thus, any further correspondence should be sent directly to [Virgin Mobile Australia]."

Answering further, Virgin Mobile USA states that it is not authorized to do business in Australia, Virgin Mobile USA does not do business in Australia, Virgin Mobile USA's wireless mobile service does not function in Australia, and Virgin Mobile USA has derived no income as a result of any sales, development, marketing and/or manufacturing of mobile products or services in Australia.

INTERROGATORY NO. 8:

Please identify every oral conversation and written communication between you and Virgin Mobile Pty. Ltd., Virgin Group and/or any other Virgin entity concerning the subject matter of this lawsuit, including within your answer (i) its date; (ii) the names of the parties involved; (iii) where it took place; (iv) the names and addresses of all persons present; and (v) the general substance of such conversation or communication.

RESPONSE TO INTERROGATORY NO. 8:

Virgin Mobile USA objects to this interrogatory on the ground that it calls for information protected by the attorney-client privilege or the attorney work product doctrine. Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that Plaintiffs' letters of July 15, 2007 and August 21, 2007 were promptly forwarded to Virgin Mobile Australia upon receipt by Virgin Mobile USA.

INTERROGATORY NO. 9:

Please identify and describe all forums that have been held for the management teams of Virgin Mobile entities within the preceding five (5) years. For each forum identified, please state whether it was attended by employees of both Virgin Mobile USA and Virgin Mobile Pty. Ltd., when and where it was held, and the frequency with which it is held *(i.e.*, annually, semiannually, *etc.*).

RESPONSE TO INTERROGATORY NO. 9:

Virgin Mobile USA objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties. Virgin Mobile USA further objects to this interrogatory on the ground that it is duplicative of Interrogatory No. 5.

INTERROGATORY NO. 10:

Please explain in detail the basis for your contention that "Virgin Mobile USA is a separate and legally distinct entity from Virgin Mobile Pty. Ltd."

RESPONSE TO INTERROGATORY NO. 10:

Virgin Mobile USA objects to this interrogatory on the ground that it overlaps with and is duplicative of Interrogatory No. 7.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA refers the Plaintiffs to its Response to Interrogatory No. 7.

INTERROGATORY NO. 11:

Please identify the entities and individuals, if any, that hold equity ownership in Virgin Mobile USA and Virgin Mobile Pty. Ltd., including within your answer the percentage of ownership each entity and individual maintains in the respective companies.

RESPONSE TO INTERROGATORY NO. 11:

Virgin Mobile USA objects to this interrogatory on the ground that it purports to seek information in the possession of third-parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile states that it does not know the "entities and individuals, if any, that hold equity ownership" in Virgin Mobile Australia because Virgin Mobile USA is a separately-organized and operated, distinct legal entity entirely independent of Virgin Mobile Australia. Answering further, Virgin Mobile USA refers the Plaintiffs to its Response to Interrogatory No. 4 as to its ownership, and states upon information and belief that, as disclosed on Virgin Mobile Australia's webpage Virgin Mobile Australia is owned entirely by Optus (see http://www.virginmobile.com.au/companyinfo/aboutus/companybackground.html), a wholly owned subsidiary of Singapore Telecommunications Ltd.

INTERROGATORY NO. 12:

Please identify and describe all oral communications and written documents exchanged between Virgin Mobile USA and Virgin Mobile Pty. Ltd. concerning the "Are You With Us or What" Campaign.

RESPONSE TO INTERROGATORY NO. 12:

Virgin Mobile USA objects to this interrogatory on the ground that it calls for information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile states that (i) it was not involved with the "Are You With Us or What" advertising campaign that was run exclusively in Australia; (ii) it did not have any communications with Virgin Mobile Pty. Ltd. concerning the "Are You With Us or What" Campaign prior to receiving correspondence from the Plaintiffs in connection with the dispute that is the subject matter of this litigation; and (iii) Plaintiffs' letters of July 15, 2007 and August 21, 2007 were promptly forwarded to Virgin Mobile Australia upon receipt by Virgin Mobile USA.

INTERROGATORY NO. 13:

If any agent, officer, director or employee of Virgin Mobile USA has traveled to Australia during the past five (5) years for any business related matter, please identify the name of the agent or employee, the general purpose of the trip, and the date of departure and return.

RESPONSE TO INTERROGATORY NO. 13:

Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile states that it is not authorized to do business in Australia, Virgin Mobile USA does not do business in Australia, Virgin Mobile USA's wireless mobile service does not function in Australia, and Virgin Mobile USA has derived no income as a result of any sales, development, marketing and/or manufacturing of mobile products or services in Australia.

INTERROGATORY NO. 14:

Please identify and describe all income received and/or expenses incurred by Virgin Mobile USA (or any of its partners, subsidiaries, or successors) as a result of the sales, development, marketing and/or manufacturing of mobile products or services in Australia.

RESPONSE TO INTERROGATORY NO. 14:

Virgin Mobile USA objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that Virgin Mobile USA is not authorized to do business in Australia, Virgin Mobile USA does not do business in Australia, Virgin Mobile USA's wireless mobile service does not function in Australia, and Virgin Mobile USA has derived no income as a result of any "sales, development, marketing and/or manufacturing of mobile products or services in Australia."

INTERROGATORY NO. 15:

Please identify and describe all oral communications and written documents between Virgin Mobile USA and Virgin Mobile Pty. Ltd. within the past five (5) years that relate to either of the following:

(a) the sales, development, marketing and/or manufacturing of mobile products or services; or

(b) the transfer of personnel (including, but not limited to, agents, directors, employees, and officers) from one Virgin entity/company to another.

RESPONSE TO INTERROGATORY NO. 15:

Virgin Mobile USA objects to this request on the ground that the term "agents" is vague and ambiguous in the context of this interrogatory. Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that there has been no "transfer of personnel," as Virgin Mobile USA understands that term, because Virgin Mobile USA and Virgin Mobile Australia are separately-organized and operated, distinct legal entities. Virgin Mobile USA further states that it is not authorized to do business in Australia, Virgin Mobile USA does not do business in Australia, Virgin Mobile USA's wireless mobile service does not function in Australia, and Virgin Mobile USA has derived no income as a result of any "sales, development, marketing and/or manufacturing of mobile products or services in Australia."

INTERROGATORY NO. 16:

Please identify all employees, directors, officers, and/or agents who worked for and/or received compensation from Virgin Mobile USA and Virgin Mobile Pty. Ltd. since January 1, 2002, including within your answer the name, address, and current and/or previous job titles of each person identified.

RESPONSE TO INTERROGATORY NO. 16:

Virgin Mobile USA objects to this request on the ground that the term "agents" is vague and ambiguous in the context of this interrogatory, and further objects on the ground that the potential use of a common agent is irrelevant to the issue of Virgin Mobile USA's status as a separately-organized and operated, distinct legal entity entirely independent of Virgin Mobile Australia. Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that it is unaware of any officers, directors, employees, or agents common to Virgin Mobile USA and Virgin Mobile Australia at any point during the period of January 1, 2002 up to and including the present.

INTERROGATORY NO. 17:

Please identify all current employees, directors, officers and/or agents of Virgin Mobile USA who worked for or with Virgin Mobile Pty. Ltd. since January 1, 2002, including within your answer the name, address, and current and/or previous job titles of each person identified.

RESPONSE TO INTERROGATORY NO. 17:

Virgin Mobile USA objects to this request on the ground that the term "agents" is vague and ambiguous in the context of this interrogatory, and further objects on the ground that the potential use of a common agent is irrelevant to the issue of Virgin Mobile USA's status as a separately-organized and operated, distinct legal entity entirely independent of Virgin Mobile Australia. Virgin Mobile USA further objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that it is unaware of any officers, directors, employees, or agents common to Virgin Mobile USA and Virgin Mobile Australia at any point during the period of January 1, 2002 up to and including the present. Virgin Mobile USA further states that prior to being hired by Virgin Mobile USA in March of 2006 to serve as its Chief Operating Officer, Jonathan Marchbank served as Chief Executive Officer of Virgin Mobile Australia.

INTERROGATORY NO. 18:

Please identify all current employees, directors, officers and/or agents of Virgin Mobile Pty. Ltd. who worked for or with Virgin Mobile USA since January 1, 2002, including within your answer the name, address, and current and/or previous job titles of each person identified.

RESPONSE TO INTERROGATORY NO. 18:

See Response to Interrogatory No. 16, which is incorporated in full by reference herein.

INTERROGATORY NO. 19:

Please identify and briefly describe all promotional materials and events – including but not limited to advertisements, ad campaigns, websites, newsletters, press releases, and – concerts sponsored, created and/or designed by or for Virgin Mobile USA since January 1, 2006.

RESPONSE TO INTERROGATORY NO. 19:

Virgin Mobile USA objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that it is not authorized to do business in Australia, does not do business in Australia, and its mobile wireless service does not function in Australia; consequently, Virgin Mobile USA has directed no advertisements, advertisement campaigns, websites, newsletters or concerts to Australia since January 1, 2006.

INTERROGATORY NO. 20:

Please identify and describe the entities, if any, that are owned, affiliated with and/or authorized by Virgin Mobile USA to participate in the sales, marketing or distribution of Virgin Mobile's products and/or services.

RESPONSE TO INTERROGATORY NO. 20:

See Response to Interrogatory No. 19, which is incorporated in full by reference herein.

INTERROGATORY NO. 21:

Explain in detail the manner and means through which Virgin Mobile USA markets, licenses, or otherwise generates revenue from the use of the Virgin brand.

RESPONSE TO INTERROGATORY NO. 21:

Virgin Mobile USA objects to this interrogatory on the ground that it is overly broad, unduly burdensome and seeks information that is not relevant to the claims or defenses of any party to the above-captioned action. Virgin Mobile USA further objects to this interrogatory on the ground that it seeks information outside the scope of discovery agreed to by the parties.

Subject to the foregoing and the General Responses and Objections, Virgin Mobile USA states that it is a party to an exclusive license agreement with Virgin Enterprises Limited, a separately owned and operated U.K. company, that authorizes Virgin Mobile USA to use various Virgin trademarks in connection with mobile voice and data services only in the United States, Puerto Rico and the U.S. Virgin Islands, through 2027. Answering further, Virgin Mobile USA states that it is a leading U.S. provider of wireless communications services, offering prepaid, or pay-as-you-go, services targeted at the youth market. Virgin Mobile USA's customers are attracted to its products and services because of the flexible monthly terms, easy to understand pricing structures, stylish handsets offered at affordable prices and relevant mobile data and entertainment content. Virgin Mobile USA offers its products and services on a flat perminute basis and on a monthly basis for specified quantities, or buckets, of minutes purchased in advance, in each case without requiring its customers to enter into long-term contracts or commitments.

Answering further, Virgin Mobile USA states that it employs a nationwide distribution network comprised of 130,000 third party retail stores that offer account replenishment, or Top-Up cards, including more than 35,000 retail locations that also sell its handsets. Virgin Mobile USA also distributes its products through leading national retailers, including Wal-Mart, Best Buy, RadioShack and Target. Answering further, Virgin Mobile USA states that it endeavors to maintain and strengthen a vibrant brand image that resonates with its customers and attracts and retains customers through its youth-oriented marketing message and service offerings. Answering further, Virgin Mobile states that it does not "market[], operate[], or otherwise generate[] revenue from the use of the Virgin brand" in Australia.

INTERROGATORY NO. 22:

Identify by name all persons and/or entities involved with or responsible for Virgin Mobile USA's advertising and marketing efforts.

RESPONSE TO INTERROGATORY NO. 22:

See Response to Interrogatory No. 19, which is incorporated in full by reference herein.

Dated: November 21, 2007
Houston, Texas

Of Counsel:

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As To Objections:

Noelle M. Reed w/ per CGF

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Attorneys For Defendant
Virgin Mobile USA, L.P.

VERIFICATION

I, Peter Lurie, General Counsel, Virgin Mobile USA, L.P., affirm under penalties of perjury that I have read the foregoing Responses and Objections to the Plaintiff's First Interrogatories To Defendant Virgin Mobile USA, L.P., and that based upon matters within my personal knowledge, the foregoing responses to interrogatories are correct, according to the best of my knowledge.

Dated: November 21, 2007
New York, New York

Peter Lurie

Australian Government

Attorney-General's Department

Service of foreign court process in Australia

Relevant conventions / treaties / agreements

Australia is a party to bilateral treaties with Korea and Thailand that are relevant to service of process issues.

Australia is also party to bilateral service conventions with the following countries - this is the result of extension of a convention made between **the United Kingdom** and each of these countries (as they then were): Austria, Belgium, Denmark, Czechoslovak Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iraq, Italy, Lithuania, Netherlands, Norway, Poland, Portugese Republic, Spain, Sweden, Switzerland, Turkey.

A bilateral service convention between Australia and **Belgium** applies to the following countries by succession from Belgium: Burundi, Democratic Republic of the Congo, Rwanda.

A bilateral service convention between Australia and **Portugal** applies to the following countries by succession from Portugal: Angola, Cape Verde, Mozambique.

A bilateral service convention between Australia and **Czechoslovakia** applies to the following countries by succession from Czechoslovakia: Czech Republic, Slovakia.

A bilateral service convention between Australia and **Turkey** applies to the following countries by succession from Turkey: Botswana, Cyprus.

A bilateral service convention between Australia and **Yugoslavia** applies to the following countries by succession from Yugoslavia: Bosnia Herzegovina, Croatia, Macedonia (FYR), Serbia and Montenegro (FRY), Slovenia.

A bilateral service convention between Australia and **France** applies to the following countries by succession from France: Algeria, Benin, Burkina Faso, Cambodia, Cameroon, Central African Republic, Laos, Lebanon, Morocco, Syria, Vietnam.

A bilateral service convention between Australia and **the Netherlands** applies to the following countries by succession from the Netherlands: Antilles and Aruba, Indonesia, Suriname.

Please note that these bilateral treaties were concluded during the 1920s and 1930s. Many of the countries extended the treaty to their external territories at the time. Even though those territories are now independent states in many instances the treaty continues in force. For more information please refer to the information available on the Austlii website.

Copies of the relevant treaties are available on the Austlii 'treaties library' website (http://www.austlii.edu.au/au/other/dfat/treaties) and specifically from this link http://www.austlii.edu.au/au/other/dfat/treaty_list/bilist/

Australia has not acceded to the *Hague Convention on the Service Abroad of Judicial Extrajudicial Documents in Civil or Commercial Proceedings 1965*.

Process to follow

Service by Private Agent

A party in another country who wishes to serve a party in Australia with documents issued by a foreign court should employ a private agent in Australia to serve the documents. Service through an agent does not breach Australian law, and is not considered by the Australian Government to be a breach of its sovereignty provided the documents to be served do not impose punishment for non-compliance on the recipient.

Private agents may be located by searching for 'process server' in the relevant State or Territory regional listing online at http://www.yellowpages.com.au. Costs vary between private agents and may be subject to an additional per kilometre charge.

Although Australia does not object to service by a private agent the foreign court that issued the process may not accept service by a private agent. This should be determined prior to engaging a private agent in Australia. If judicial authority is required to prove service then the diplomatic channel should be used.

A foreign court may send a letter to Australia requesting the service of documents notifying the person of civil or commercial proceedings in a foreign court. Letters of request are usually sent under a bilateral treaty or as a matter of international or judicial comity.

Diplomatic Channel

A party in another country who wishes to serve a party in Australia with documents issued by a foreign court may send a request through the diplomatic channel. The diplomatic channel is always used when there is no treaty or agreement in place between Australia and the foreign country. Where there is no agreement in place requests for assistance will normally be executed on the basis of reciprocity. The diplomatic channel is also used under the bilateral treaties between the UK and numerous European countries and their former territories.

A request for service through the diplomatic channel should be sent from the foreign affairs ministry of the requesting country to the Australian Department of Foreign Affairs and Trade (DFAT). DFAT will refer the request to the relevant State or Territory authority for action. Delays of three to six months can be experienced when using the diplomatic channel.

The contact details for DFAT are:

Administrative and Domestic Law Group
Legal Branch
Department of Foreign Affairs and Trade
R G Casey Building
John McEwen Crescent
BARTON ACT 0221
Australia

Korean and Thai bilateral treaties (Central Authorities)

Requests for assistance in the service of documents made under the Korean or Thai treaties use Central Authorities designated under the treaties for transmittal of requests. The Australian Attorney-General's Department is the designated Central Authority under both treaties. Letters of request under the bilateral treaties with Korea and Thailand should be sent to:

Administrative Law and Civil Procedure Branch
Civil Justice Division
Australian Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
Australia

The Attorney-General's Department will refer the request to the relevant State or Territory authority for action.

Matters to be set out in all letters of request for assistance

All letters of request to Australia, whether made under a bilateral treaty or as a matter of comity should:

- set out the relevant treaty, if any, under which the request is made.
- set out the name of the requesting court.
- state the nature of the proceedings for which the service of court process is required.
- set out the names and descriptions of the parties.
- set out the name, description and addresses of the person to be served.
- set out any special procedure which the party wishes the Australian authorities to follow.

The letter of request must be certified by a court or judicial authority (carry the court seal or stamp) and be accompanied by two certified copies. If the request comes from a non English speaking country the request must also be accompanied by translations in English of the letter of request and any accompanying documents. The translations must include certification by the translator attesting to the authenticity of the translation.

Pursuant to State and Territory legislation and applicable Court Rules relating to service of foreign court process, requests will not be executed that do not comply with these procedural requirements.

Delays

Making a request for assistance using formal channels can result in some delay. The time taken to process a request for service will vary in each case and it is difficult to estimate the time a request may take. As delays can be expected in using formal channels a private agent should be used whenever possible.

Fees and Charges

Whether any fees will be charged depends upon the provisions of the relevant treaty or convention and which State or Territory effects service.

Some treaties allow for fees to be charged. Some State or Territory authorities charge for their services. Fees that have been charged previously range from $50AUD to $100 AUD. Please note that is figure is an estimate only and if you wish to know the exact amount the relevant State or Territory authority should be contacted.

Commonwealth countries

The diplomatic channel is not generally used between Commonwealth countries because the foreign ministries of some of those countries (for example New Zealand and the United Kingdom) will not assist with such requests.

Contact details

Any further queries relating to this information, or correspondence relating to private international law matters should be directed to:

Administrative Law and Civil Procedure Branch
Civil Justice Division
Australian Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
Australia

Telephone 61 (0)2 6250 6255
Facsimile 61 (0)2 6250 5902

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Maintainer: Administrative Law and Civil Procedure Branch